

## RULEMAKING NOTICE FORM

Notice Number 2009-33 Rule Number He-W 567

1. Agency Name & Address:  <b>NH Dept. of Health &amp; Human Services          Office of Medicaid Business and Policy          129 Pleasant Street          Concord, NH 03301</b>	2. RSA Authority: <u><b>RSA 161:4-a, IX</b></u> 3. Federal Authority: <u><b>N/A</b></u> 4. Type of Action: Adoption <u><b>X</b></u> Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____
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5. Short Title: **Hearing Aid Services**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

**He-W 567 is being proposed to adopt this expired rule. This rule describes hearing aid services and items that are provided to Title XIX recipients. Covered services and items, time frames for receipt of those services and items, and criteria for receipt of those services and items are also described. Non-covered services are detailed, as well as any limitations on services.**

**Changes to this proposed rule from the expired rule are being made for clarity and to improve program integrity. Specific changes include: (1) updating the definition and provider participation sections; (2) correcting an error so that now a hearing aid evaluation is correctly specified as being every 2 years, rather than every year, consistent with He-W 530 Service Limits; (3) adding pocket talkers to the covered services list; (4) updating the criteria for coverage of monaural and binaural hearing aids; (5) moving the replacement of hearing aids from the non-covered list to the covered list, conditioned on certain criteria being met; (6) expanding both the covered and non-covered services lists to provide greater detail and clarity; (7) adding a documentation section; and (8) no longer requiring prior authorization for any hearing aid services or items.**

6. (b) Brief description of the groups affected:

**All Title XIX recipients and audiology providers are affected by this rule.**

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section	RSA/Federal Statute Implemented
He-W 567.01	RSA 137-F:2,IV, Section 216(i)(l) of the SSA, Section 1614(a)(2) of the SSA
He-W 567.02	42 CFR 440.210, 42 CFR 440.220
He-W 567.03	RSA 137-F:11, RSA 137-F:8, 42 CFR 440.110, 42 CFR 440.120, 42 CFR 440.70
He-W 567.04	42 CFR 440.230
He-W 567.05	42 CFR 440.2, 42 CFR 440.110, 42 CFR 440.120, 42 CFR 440.70, 42 CFR 441.57
He-W 567.06	42 CFR 440.110, 42 CFR 440.120, 42 CFR 440.70, 42 CFR 440.230
He-W 567.07	42 CFR 431.107, 42 CFR 455, 42 CFR 456
He-W 567.08	42 CFR 455, 42 CFR 456
He-W 567.09	42 CFR 433, Subpart D
He-W 567.10	42 CFR 447.204

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Michael Holt** Title: **Rules Coordinator**  
Address: **DHHS, Administrative Rules Unit** Phone #: **271-4966**  
**129 Pleasant Street** Fax#: **271-5590**  
**Concord, NH 03301** E-mail: **michael.holt@dhhs.state.nh.us**

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/DHHS/ADMINRULEMAKING/default.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Monday, April 20, 2009**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, April 10, 2009 at 1:00 PM**

Place: **129 Pleasant St., Brown Building Auditorium, Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 09:028, dated 03/10/09

Fiscal Impact Statement for Department of Health and Human Services rules governing requirements for Hearing Aid Services. [He-W 567]

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

The previous rules expired in December of 2003; the Department has continued to operate under the provisions of the expired rules. When compared to the expired rules, the proposed rules will increase state expenditures by approximately \$50,000 annually, of which \$25,000 would be state general funds.

**2. Cite the Federal mandate. Identify the impact of state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

The proposed rules change the hearing loss criteria which may result in additional hearing aids being dispensed, but any increase is expected to gradually lessen as the current population gets served. Any costs from the proposed rules are expected to result predominantly from the additional coverage of pocket talkers. The Department estimates 250 individuals will request a pocket talker at \$200 per unit at a cost of approximately \$50,000 annually, of which \$25,000 (or 50%) would be state general funds.

**B. To State citizens and political subdivisions:**

None.

**C. To Independently owned businesses:**

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

**The proposed rule modifies an existing program or responsibility, but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.**

**Adopt He-W 567, previously effective 12/29/95 (Document #6157) and expired 12/29/03, to read as follows:**

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 567 HEARING AID SERVICES

He-W 567.01 Definitions.

(a) “Audiogram” means a specific hearing test which charts a person’s hearing sensitivity utilizing an audiometer or other specialized equipment, which may include:

- (1) Pure tone air audiometry;
- (2) Bone conduction testing;
- (3) Speech audiometry, including speech reception threshold and speech recognition; and
- (4) Auditory brainstem response (ABR) testing which includes measurements of frequency specific thresholds.

(b) “Department” means the New Hampshire department of health and human services.

(c) “Healthy kids-gold” means the program administered by the department under which the assistance authorized by Title XIX of the Social Security Act is made available to individuals under the age of 19.

(d) “Hearing aid” means “hearing aid” as defined in RSA 137-F:2, IV, namely, “any wearable instrument or device designed for or offered for the purpose of or represented as aiding or compensating for impaired human hearing and any parts or attachments, including ear molds, but excluding batteries and cords or accessories thereto, or equipment, devices, and attachments used in conjunction with services provided by a public utility company.”

(e) “Hearing aid consultation” means discussion with an audiologist of hearing aid options regarding degree, type, and configuration of hearing loss to determine an appropriate make and model of hearing aid.

(f) “Hearing aid evaluation” means real ear evaluation of the current aids to determine if the aids are adequate to meet the recipient’s needs, or sound field evaluation for devices that cannot be measured via real ear, such as cochlear implants, bone anchored or bone conduction hearing aids.

(g) “Medicaid” means the Title XIX program administered by the department which makes medical assistance available to eligible individuals age 19 and over.

(h) “Pocketalker” means the brand name Pocketalker or other generic portable, personal amplification device that is used to amplify sound and speech or to adjust tone to enhance comprehension of speech.

(i) “Recipient” means any individual who is eligible for and receiving medical assistance under programs entitled healthy kids-gold or medicaid.

(j) “Statutory blindness” means “statutory blindness” as defined in Sections 216(i)(1) and 1614(a)(2) of the Social Security Act, 42 USC 416 and 42 USC 1382c.

(k) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under programs entitled healthy kids-gold or medicaid.

He-W 567.02 Recipient Eligibility. All Title XIX recipients shall be eligible for hearing aid services, in accordance with He-W 567.

He-W 567.03 Provider Participation. Each participating hearing aid services provider shall be:

(a) One of the following:

(1) An audiologist licensed in accordance with RSA 137-F:11 or licensed by the state in which he or she practices; or

(2) A hearing aid dealer registered in accordance with 137-F:8 or credentialed in accordance with applicable law in the state in which he or she practices; and

(b) A New Hampshire enrolled Title XIX provider.

He-W 567.04 Service Limits. All hearing aid services shall be subject to the limits set forth in He-W 567 and He-W 530.03.

He-W 567.05 Covered Services. With the exception of those items specified in He-W 567.06, the following hearing aid services and items shall be covered:

(a) The following hearing aid services and items when provided by an audiologist or hearing aid dealer:

(1) The hearing aid evaluation or a hearing aid consultation, which shall be limited to one service every 2 years since the last date of service for recipients age 21 or over and as needed for recipients under age 21;

(2) The ear mold(s);

(3) The least costly hearing aid(s) or pocket talker as determined by the audiologist or hearing aid dealer to achieve appropriate access to speech in all of the recipient’s communication settings;

(4) The dispensing/fitting of the hearing aid(s) or pocket talker, including real ear verification for conventional hearing aids, adjustment and instruction;

(5) Follow-up to include verification of hearing aid or pocket talker performance, if not completed at the fitting, and monitoring of hearing thresholds, as needed; and

(6) The audiogram;

(b) Monaural hearing aids:

(1) For recipients under 21 years of age when:

- a. The audiogram indicates a unilateral hearing loss of one or more thresholds of 25 decibels (dB) hearing level (HL) or poorer at any frequency from 1000 hertz (Hz) to 4000 Hz; and
- b. The audiologist or hearing aid dispenser deems the loss communicatively significant; and

(2) For recipients 21 years of age or over when the audiogram indicates a bilateral hearing loss with an average threshold of 35 dBHL or poorer for 1000 Hz, 2000 Hz, 3000 Hz, and 4000 Hz by pure tone air conduction;

(c) Binaural hearing aids:

(1) For recipients under 21 years of age when:

- a. The audiogram indicates a bilateral hearing loss of one or more thresholds of 25 dBHL or poorer at any frequency from 1000 Hz to 4000 Hz; and
- b. The audiologist or hearing aid dispenser deems the loss communicatively significant; and

(2) For recipients 21 years of age or over, when either:

- a. The following apply:
  - (i) The coverage criteria for monaural hearing aids per He-W 567.05(b) has been met; and
  - (ii) One of the following criteria has been met:
    - i. The recipient is attending post-secondary school at any educational level for the purpose of obtaining employment or is receiving vocational training, as documented in accordance with He-W 567.07(d); or
    - ii. The recipient is employed or is likely to become unemployed if hearing remains unaided, as documented in accordance with He-W 567.07(c); or
- b. The recipient meets the definition of statutory blindness per He-W 567.01(j) and as documented in accordance with He-W 567.07(b), and an audiogram indicates a unilateral hearing loss with an average threshold of 35 dBHL or poorer for 1000 Hz, 2000 Hz, 3000 Hz, and 4000 Hz by pure tone air conduction;

(d) Hearing aid batteries for the life span of the hearing aid(s);

(e) Replacement of hearing aids:

(1) If there is an increase in the recipient's hearing loss, as established by the most recent audiogram, which makes the existing hearing aid ineffective;

- (2) If an audiologist or hearing aid dealer determines that the hearing aid can no longer be repaired, or that it is not cost effective to do so; or
  - (3) If the replacement is due to loss and is coverable under He-W 546 for recipients under age 21;
- (f) Hearing aid repairs, which shall not require:
- (1) A physician referral; or
  - (2) An initial purchase by medicaid;
- (g) FM systems for recipients under age 21, when a hearing aid on its own does not meet the recipient's personal amplification needs, or when a traditional hearing aid is not an appropriate option, as determined by an audiologist;
- (h) Pocket talkers, to accommodate hearing loss and enhance communications, when:
- (1) The audiogram indicates that a recipient has a bilateral hearing loss with an average threshold of 35 dBHL or poorer for 1000 Hz, 2000 Hz, 3000 Hz, and 4000 Hz by pure tone air conduction; and
  - (2) A hearing aid has not also been covered by medicaid;
- (i) Replacement of a pocket talker:
- (1) With hearing aid(s) or a more effective pocket talker if there is an increase in the recipient's hearing loss, as established by the most recent audiogram, which makes the existing pocket talker ineffective; or
  - (2) Once every 5 years; and
- (j) Replacement of a headset, earbuds, or neckloop for a pocket talker once every year if an audiologist determines that such accessories are malfunctioning.
- He-W 567.06 Non-Covered Services. Non-covered services shall include:
- (a) Replacement of hearing aids due to loss, misuse, or abuse, except as noted in He-W 567.05(e)(3);
  - (b) FM systems, if the systems are for the sole purpose of recipient use in an educational setting and are coverable under He-M 1301;
  - (c) Repair of hearing aids which are covered under a warranty;
  - (d) Pocket talker repairs, batteries, accessories, except those listed in He-W 567.05(j) above, and optional telelinks;
  - (e) A pocket talker if a hearing aid is already covered by medicaid; and

(f) A hearing aid if a pocket talker is already covered by medicaid, unless the criterion in He-W 567.05(i)(1) is met.

He-W 567.07 Documentation. The hearing aid services provider shall maintain supporting records, including:

- (a) An audiogram;
- (b) Audiological and medical data, documenting the required criteria, as established in accordance with He-W 567, to support the request for the hearing aid(s) or pocket talker;
- (c) A letter from the recipient's employer, if applicable, verifying the recipient's employment status, and a statement from the audiologist stating that the recipient would likely become unemployed if his or her hearing remains unaided; and
- (d) A letter from the recipient's school verifying attendance or documentation confirming the recipient is receiving vocational training, if applicable.

He-W 567.08 Utilization Review and Control. The department's surveillance and utilization and review of subsystems unit (SURS) shall monitor utilization of hearing aid services, in accordance with 42 CFR 455 and 42 CFR 456.

He-W 567.09 Third Party Liability. All third party obligations shall be exhausted before Title XIX shall be billed, in accordance with 42 CFR 433.139.

He-W 567.10 Payment for Services.

- (a) Payment for hearing aid services shall be made in accordance with rates established by the department in accordance with RSA 161:4, VI(a).
- (b) The hearing aid services provider shall submit claims for payment to the department's fiscal agent.
- (c) The hearing aid services provider shall maintain supporting records, in accordance with He-W 520.



### Appendix

<b>Rule Section</b>	<b>RSA/Federal Statute Implemented</b>
He-W 567.01	RSA 137-F:2, IV; Section 216(i)(l) of the SSA; Section 1614(a)(2) of the SSA
He-W 567.02	42 CFR 440.210; 42 CFR 440.220
He-W 567.03	RSA 137-F:11; RSA 137-F:8; 42 CFR 440.110; 42 CFR 440.120; 42 CFR 440.70
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He-W 567.08	42 CFR 455; 42 CFR 456
He-W 567.09	42 CFR 433, Subpart D
He-W 567.10	42 CFR 447.204